

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

LIONEL WILTZ

V.

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

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NO. 1:04-CV-484

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**


The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge submitted a Report and Recommendation, which recommends that the decision of the Commissioner be affirmed.

Plaintiff filed objections to the magistrate judge's Report and Recommendation. The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). The magistrate judge incorrectly stated that the Commissioner received new evidence from an examining physician following remand. Therefore, plaintiff's objection with respect to that misstatement is sustained. However, the magistrate judge's recommendation remains correct. Even absent new evidence from any source, the administrative law judge in this case was free to re-examine the existing evidence and reach new conclusions. After careful consideration, the court concludes the remaining objections are without merit.

ORDER

Accordingly, plaintiff's objection that the magistrate judge incorrectly stated that the Commissioner received new evidence from an examining physician is **SUSTAINED**. All other objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this the **20** day of **December, 2005**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge